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14/Election
w/ traverse
PATENT
Attorney Docket No. BBI-6077CP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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9-6-02
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IN RE APPLICATION OF
Kevin P. Cusack et al.

EXAMINER: Gerstl, Robert SEP 03 2002

ART UNIT: 1614

TECH CENTER 1600/29C

APPLICATION NO.: 09/777,554

FILED: February 6, 2001

FOR: Benzothiazole Derivatives

I hereby certify under 37 CFR 1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.
Date of Deposit AUGUST 23, 2002

Carla K...
ANGELA PERRO

Commissioner for Patents
Washington, D.C. 20231

Sir:

REPLY UNDER 37 C.F.R. §1.111

This is in reply to the Office Action mailed July 30, 2002, the period for response thereto having been set to expire on August 30, 2002.

REMARKS

Reconsideration of the Office Action mailed July 30, 2002, (hereinafter "instant Office Action"), and withdrawal of the election requirement directed to claims 1-60, are respectfully requested.

In the instant Office Action, claims 1-60 are listed as pending and claims 1-60 are subject to restriction and/or election requirement.

The Examiner has required election of a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. Applicants respectfully traverse the election requirement. However, to be fully responsive to the election requirement, Applicants provisionally elect the species N-ethyl-N'-(6-nitro-1,3-benzothiazol-2-yl)urea which is Example 8

on page 70 of the instant specification. Claims 1-6, 12, 14, 23-39, 50, and 57-60 read upon the provisionally elected species.

The Examiner alleges that the inventions listed on page 2 of the instant Office Action are not so linked as to form a single general inventive concept under PCT Rule 13.1, because under PCT Rule 13.2, the species lack the same or corresponding technical features because the proviso language renders the embodiments indistinct. Applicants respectfully submit that the election requirement is improper under M.P.E.P. §1893.03(d), which specifically explains the "unity of invention" practice which is applicable in international applications (both Chapter I and II) and in national stage applications filed under 35 U.S.C. §371. Applicants respectfully point out that the instant application was filed under 35 U.S.C. §111(a) and claims the benefit of U.S. Provisional Application No. 60/180,841. The instant application is not a 35 U.S.C. § 371 filing from a PCT application.

Nonetheless, Applicants submit that the election requirement is not in compliance with "unity of invention" practice.

Unity of invention practice is governed by PCT Rule 13, more specifically Rule 13.1, which requires that for unity of invention:

The international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention").

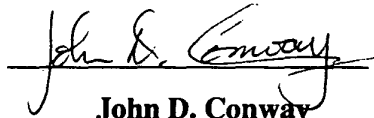
Applicants respectfully point out that the single inventive concept of all of the therapeutic agents listed in claims 1-60 is that they are useful as inhibitors of serine/threonine and tyrosine kinases. In particular, compounds of the instant invention are useful as inhibitors of tyrosine kinases important in hyperproliferative diseases. (see page 33, lines 19-21 of the specification). Thus, all of the aforementioned compounds fall within the inventive concept of the instant application.

Based upon the foregoing, the restriction requirement should be withdrawn and all of the subject matter of claims 1-60 should be prosecuted together. Prompt and favorable action is earnestly solicited.

If the Examiner believes that there are any issues that could be resolved in a telephone conference, Applicants invite the Examiner to call Applicants' undersigned attorney.

Respectfully submitted,

Date: Aug. 23, 2002



John D. Conway
Attorney for Applicants
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Angela Perno

ANGELA PERNO

Sir:

TRANSMITTAL LETTER

Transmitted herewith are the following:

Reply Under 37 C.F.R. §1.111

Request to Change the Order of Inventors

Associate Power of Attorney (37 CFR 1.34) and Change of Correspondence Address

(37 CFR 1.8(a))

Acknowledgement Postcard

Respectfully submitted,

Date:

Aug. 23, 2002

John D. Conway

John D. Conway

Attorney for Applicants

Reg. No.: 39,150

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